

United States Court of Appeals  
FOR THE EIGHTH CIRCUIT

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No. 96-2413

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In Re: MELP, Ltd.,

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Debtor.

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Harvey A. Friedman,

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Appellee,

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Appeal from the United States  
District Court for the  
Eastern District of Missouri.

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v.

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**[UNPUBLISHED]**

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MELP, Ltd.; Davis & Davis,

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Appellants.

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Submitted: May 23, 1997

Filed: July 17, 1997

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Before BEAM, Circuit Judge, HENLEY, Senior Circuit Judge, and LOKEN, Circuit Judge.

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PER CURIAM.

In April 1990, the bankruptcy court appointed an operating trustee for Chapter 11 debtor MELP, Ltd. but allowed debtor to continue to be represented by separate counsel. The court subsequently approved an award of fees from the Chapter 11 estate to Davis & Davis, debtor's counsel. Harvey Friedman, debtor's limited partner,

appealed that award, and the district court affirmed. The bankruptcy court then approved a second fee award to Davis & Davis, including an award for time spent defending the first award on appeal to the district court. Friedman again appealed.

Reversing the second fee award, the district court<sup>1</sup> concluded that an attorney for a debtor not in possession -- that is, when the Chapter 11 estate has an operating trustee -- may recover fees from the estate “only for services which provided an identifiable, tangible and material benefit to the estate.” Applying that standard, the court denied an award of fees for defending the first fee award on appeal and remanded the remainder of the second fee award for further consideration of the benefit-to-the-estate issue. The parties settled the issues on remand, and debtor and Davis & Davis now appeal the denial of fees for successfully defending the first fee award. After carefully considering the record on appeal, we affirm for the reasons stated in the district court’s March 28, 1995, memorandum opinion. See 8th Cir. Rule 47B.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

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<sup>1</sup>The HONORABLE GEORGE F. GUNN, JR., United States District Judge for the Eastern District of Missouri.